

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

Regulation of Prepaid Calling Card Services

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WC Docket No. 05-68

**REPLY COMMENTS OF IDT TELECOM, INC.**

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Dated: October 23, 2006

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IDT Telecom, Inc. (“IDT” or “Company”), through its undersigned counsel, respectfully submits these Reply Comments in response to the comments filed on IDT’s Petition for Clarification or, in the Alternative, for Reconsideration of footnote 101 in the *Declaratory Ruling and Report and Order* (“Order”) issued by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.<sup>1</sup> The comments filed make clear that the Commission should grant IDT’s Petition.

**I. PARTIES AGREE THAT COMPENSATION IS NOT OWED FOR CALLS THAT REACH A CARRIER’S PLATFORM AND ARE ABANDONED.**

Comments were filed by only two parties: (1) the American Public Communications Council (“APCC”); and (2) RNK, Inc. (“RNK”). RNK fully supports the IDT Petition. APCC, while making various unsupported claims about a variety of issues,<sup>2</sup> ultimately agrees with the issue for which IDT seeks clarification. APCC states *in agreement with IDT* as follows:

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<sup>1</sup> *Regulation of Prepaid Calling Card Services*, WC Docket No. 05-68, Declaratory Ruling and Report and Order, FCC 06-79 (rel. June 30, 2006). In footnote 101 of the *Order*, the Commission states that it “agrees . . . that [its] rules require the payment of dial-around compensation to a payphone service provider when the cardholder completes a call to the platform without attempting to call a third party.” *Id.* at n.101.

<sup>2</sup> APCC makes claims about the current state of the law that are incorrect. For example, without citing to any Commission rules, APCC states that “[u]nder the *current rule*, prepaid card providers must pay compensation for all calls where the platform provides information and thus the call is completed at the platform.” APCC Comments at 2 (emphasis added). There is no rule

To be clear, since compensation is required only when a call is completed to the called party, APCC agrees with IDT that no compensation is due where a caller calls a prepaid card platform number in order to make a call to a separate called party and hangs up before entering a PIN. See Petition at 8-9. In such an instance, no call is or could be completed to a called third party, and the platform has not provided any information to the caller so the call is not considered completed at the platform.

APCC further agrees with IDT that if a PIN is entered, but no information is provided, and a caller does not complete the process of entering a called party number, then no compensation is due. *See id.* APCC agrees that this is true regardless of whether (1) the caller enters a called number but the called party does not answer or (2) the caller abandons the call before completing the process of entering a called number. IDT is certainly correct that callers might abandon calls for "various reasons, such as, confusion, distraction, indecision, etc." Petition at 6. No matter the reason, such abandoned calls where no information is provided by or at the platform are not answered by the called party, and thus are not completed within the meaning of Section 276.<sup>3</sup>

Thus, all parties agree, and the Commission should clarify, that footnote 101 in no way should be construed to require dial-around compensation for communications that only reach the platform without the caller affirmatively accessing information services or reaching a called party (*i.e.*, abandoned calls).

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that supports such a statement. Moreover, APCC attacks IDT for failing to provide data on the number of abandoned calls and argues that the failure to provide such data is a basis for denying the Petition. APCC Comments at 5-6. APCC cites no authority for such claim because there is no requirement that IDT produce data on the number of calls. In fact, APCC's argument is strange given that APCC would likely be the first to argue that each and every call is important for purposes of determining whether compensation is due. Thus, a single call may be disputed between parties and it is worthwhile to seek clarification from the Commission to avoid such disputes. If there is a certain threshold number of calls that APCC believes are unimportant, APCC should provide such number. Nonetheless, if Commission Staff believes that knowing the number of abandoned calls is relevant in rendering a decision, IDT will provide under confidential seal the number of abandoned calls in a sample period of time to assist the Commission in deliberating this matter at the request of the Commission.

<sup>3</sup> APCC Comments at 7-8.

Notwithstanding the agreement amongst the parties, there appears to be a disagreement about calls where account information is provided automatically to the calling party at the beginning of the call.<sup>4</sup> As demonstrated below, APCC's argument is without merit. Accordingly, APCC's arguments should be summarily dismissed, and the Commission should grant IDT's Petition.

**II. APCC IS MISTAKEN IN ITS ASSERTION THAT COMPENSATION IS OWED FOR THE ACCOUNT INFORMATION PROVIDED AUTOMATICALLY AT THE BEGINNING OF A PREPAID CALL.**

Aside from its agreement with the basis of IDT's Petition, APCC announces its belief that compensation is due when a caller reaches the platform, inputs a personal identification number ("PIN") (or other account information) and is provided account information *automatically*.<sup>5</sup> APCC provides no legal support for its position. Instead, APCC states that such calls "are no different from any other kind of customer service call."<sup>6</sup> APCC is incorrect.

**A. Automatic Account Information is Required by Certain State Laws.**

Automatic account information is required by certain state laws.<sup>7</sup> In other words, unlike typical customer service calls, carriers are required by law to provide account information

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<sup>4</sup> APCC Comments at 8-13; RNK Comments at 5.

<sup>5</sup> APCC Comments at 8-13. The Commission recognizes two types of calls: telecommunications service calls and information service calls. APCC attempts to create a new, third type of call: calls where the platform dispenses information. APCC Comments at 6. Such "broader category of calls" (APCC Comments at 6) have never been recognized by the Commission as a separate category of calls. In fact, the Commission has found that the provision of such automatic information to a calling party is merely incidental to the processing of a telephone call and not a separate, completed information service call. *See The Time Machine, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 1186, ¶ 40 (Com. Car. Bureau 1995).

<sup>6</sup> APCC Comments at 9.

<sup>7</sup> *E.g.*, Louisiana Public Service Commission General Order, Appendix A, Section I.I (1997) ("In advance of each call, end users must be informed of the time, units or dollars

automatically. For example, the State of Texas requires that prepaid calling card service companies:

provide an announcement (1) at the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card . . . .<sup>8</sup>

Contrary to APCC's assertions,<sup>9</sup> prepaid calling card companies cannot choose to forgo providing automatic accounting announcements to calling parties. In fact, because state laws require automatic account information, *every* prepaid calling card call provides such information.<sup>10</sup> Thus, under APCC's argument, every prepaid payphone call would result in compensation to a payphone service provider ("PSP"), regardless of whether the calling party reached the *intended* called party.<sup>11</sup> This is not what Congress intended, nor what the Commission's rules require. Congress specifically limited the word "call" with the word "completed" to avoid that which APCC argues.<sup>12</sup>

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remaining on the card."); Texas Public Utility Commission Substantive Rules, §26.34(g)(1) ("Prepaid calling services companies shall provide an announcement (1) at the beginning of each call indicating the domestic minutes, billing increments, or dollars remaining on the prepaid calling services account or prepaid calling card, and . . . ."); Washington Administrative Code, §480-120-264(6)(a) ("A [prepaid calling service] provider must announce at the beginning of each call the time remaining on the prepaid account or prepaid calling card; and . . . .").

<sup>8</sup> Texas Substantive Rules, Section 26.34(g)(1).

<sup>9</sup> APCC Comments at 11 ("[IDT] has the discretion to decide whether or not to provide callers with automatic balance information." "[IDT] can structure its calling card products so that information is not provided automatically."); *see also*, APCC Comments at 12 (" . . . if IDT chooses to continue to automatically provide account information . . . .").

<sup>10</sup> Carriers must comply with all state commission requirements due to the mobility of prepaid calling cards. *The Time Machine, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 1186 (Com. Car. Bureau 1995).

<sup>11</sup> APCC's suggestion about a proxy for completed calls is bewildering. APCC Comments at n.9. The statute is clear on its face that only completed calls are compensable.

<sup>12</sup> 47 U.S.C. §276.

**B. Automatic Account Information Does Not Transform a Platform into a Called Party, thereby, Triggering Compensation Obligations.**

APCC fails to cite to any authority for its assertion that the platform is a called party when automatic account information is provided to the calling party. Contrary to APCC's assertion, the Commission has made clear that a platform is *not* a called party for purposes of designating a call "completed" under section 276 of the Act.<sup>13</sup> In its *First Payphone Order*, the Commission reaffirmed its previous finding in *Teleconnect Co. v. Bell Telephone Company of Pennsylvania* that "where an 800 calling card call is routed through an IXC's platform, it should not be viewed as two distinct calls -- one to the platform and one to the called party."<sup>14</sup> Consistent with its decision in its *First Payphone Order*, the Commission later concluded that calls dropped off at a carrier's platform are not completed for purposes of payphone compensation.<sup>15</sup> Thus, a call that reaches the carrier's platform is *not* a completed call.

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<sup>13</sup> *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, 11 FCC Rcd 20541, 20574 (1996) ("*First Payphone Order*"); see also *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, CC Docket No. 96-128, 13 FCC Rcd 10893, 10915 (1998) ("*Coding Digit Waiver Order*"); see also *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Order on Clarification, CC Docket 96-128, 16 FCC Rcd 20922, 20925 (2001) ("*Third Order on Reconsideration*").

<sup>14</sup> *First Payphone Order* at para. 63 (emphasis added) citing *Teleconnect Co. v. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1626, 1629 (1995); see also, *Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania*, 10 FCC Rcd 1634 (1995); see also, *The Time Machine, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 1186 (Com. Car. Bureau 1995).

<sup>15</sup> *Third Order on Reconsideration and Order on Clarification*; para. 7-8 (The Commission specifically rejected AT&T's practice of "paying compensation to PSPs for all calls that complete to a [switch base reseller's] platform). *Id.*

The Commission has been clear that a completed call is a call that is answered by the called party.<sup>16</sup> The identity of the called party is determined by the affirmative actions of the calling party (*i.e.*, the customer),<sup>17</sup> which may be assessed in an objective manner by the carrier. For example, if a calling party inputs a called party number, the identity of the called party is clear and the called party must answer the call to be completed under the Commission's rules. If a calling party inputs a menu item (*i.e.*, horoscope), the identity of the called party is clear and the called party (*i.e.*, the horoscope recording) must answer the call to be completed under the Commission's rules.<sup>18</sup> Thus, APCC's claim that excluding calls that provide automatic account information will open a Pandora's box of subjective interpretations of the caller's intent is bogus.<sup>19</sup> The calling party's affirmative actions are an objective way to identify the called party and the objective standard for purposes of determining whether a call is completed has already been stated by the Commission. The called party must answer the call. Whether the called party is a live human being (*i.e.*, a friend, family member, live operator) or a recording (*i.e.*, weather, horoscope), the call must be answered by such called party to be compensable. A platform is a vehicle for these calls to reach a called party, but is not a called party, and the provision of unsolicited, automatic account information to the customer does not transform the platform into a

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<sup>16</sup> *First Payphone Order*, 11 FCC Rcd at 20573-20574; *Payphone Reconsideration Order*, 11 FCC Rcd at 21242; *Coding Digit Waiver Order*, 13 FCC Rcd at 10915; *Third Order on Reconsideration*, at para. 7.

<sup>17</sup> The D.C. Circuit relied on the caller's point of view when concluding the one call nature of toll free calls. *Florida Public Telecommunications Ass'n. v. FCC*, 54 F.3d 857, 860 (D.C.Cir. 1995). The Commission relied on this case in defining completed call in its *First Payphone Order*. *First Payphone Order* at para. 63.

<sup>18</sup> It is these affirmative actions that distinguish between incidental information provided at the beginning of a call (*i.e.*, automatic account information) and information sought by the consumer from an information service provider (*i.e.*, horoscope, weather, etc.).

<sup>19</sup> APCC Comments at 11.

called party. Thus, APCC's assertion is false - calls to the platform are not completed when account information is provided automatically and, therefore, do not require compensation.

**C. It is Adverse to Public Interest to Deem Automatic Account Information Calls as Completed Calls Under the Commission Rules.**

APCC seeks to reduce the calling card customer experience for its personal gain. It would be adverse to the public interest to deem a call completed when account information is automatically provided to the calling party. Unable to cease providing such automatic announcements due to state laws and unable to carry the costs,<sup>20</sup> carriers will be left with no choice but to charge customers for the automatic announcements<sup>21</sup> placing a tremendous strain on prepaid calling card providers by devaluing the prepaid calling card and imposing a hardship on consumers.<sup>22</sup> Such charges, to the extent there is enough money remaining on the prepaid calling card, would unfairly punish customers and decrease the value of the prepaid card for the consumer. In situations where there are sufficient funds on the card, a deduction from the card of a minimum of \$0.494 would devalue the card and punish the consumer for state requirements intended to assist consumers. The consumer would likely be surprised to learn that such *automatic* announcement results in a "completed" call. For the cards without sufficient funds to

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<sup>20</sup> A carrier cannot sustain costs of 50 cents for every call in addition to the other costs involved in transporting a call.

<sup>21</sup> Certain state laws prohibit carriers from charging consumers for uncompleted calls. *See* state regulations cited *supra* n.7. To the extent the Commission finds that automatic announcements result in a "completed call" requiring compensation to PSPs, carriers are permitted under Commission regulations to collect compensation from customers and such finding may, depending on the state definition of uncompleted calls, require preemption by the Commission.

<sup>22</sup> The harm to carriers and consumers cannot be overstated. Not only will compensation be paid on every call due to state requirements, but PSPs may argue that the amount of compensation is doubled if, after receiving the automatic account announcement, the caller reaches the intended called party.



cover the payphone compensation payment, the prepaid calling card provider will be forced to finance the compensation and face financial strain.

These consequences are particularly unjust given that the market users of prepaid cards typically are immigrant and ethnic populations as well as the credit-challenged or budget-conscious consumers (*e.g.*, low income, elderly). Consumer confusion on charges for such calls likely will be pervasive and could negatively impact the market for prepaid calling card services as consumers choose not to use those services. Ultimately less competitive options would be available as carriers leave the market or block calls. Such a result would be contrary to the public interest and the Congressional mandate to encourage payphones.

**D. APCC's Assertion Would Result in a Rule Change in Violation of Section 276 of the Act and the Notice Procedures of the Administrative Procedures Act**

First and foremost, for the reasons explained above, any rule that mandates dial-around compensation for *automatic* account information provided at the beginning of a call violates the basic mandate of Section 276 of the Act that payphone compensation is required for "completed" calls only.<sup>23</sup> Moreover, such a mandate is a clear rule change for which proper notice under Section 553(b) of Administrative Procedures Act ("APA") was not given.<sup>24</sup> Specifically, and again for the reasons discussed above, the Act and the Commission's payphone compensation rules require that compensation be paid on "completed" calls only, which the Commission has long defined as a call "answered by the called party." The Commission has previously found that a prepaid calling card provider's platform is not a called party and communications to the platform do not constitute compensable completed calls. Accordingly, to the extent that the

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<sup>23</sup> 47 U.S.C. § 276(b)(1)(A).

<sup>24</sup> 5 U.S.C. § 553(b).

Commission intends to require compensation on calls that provide automatic account information at the beginning of the call, it is redefining what constitutes a “completed” call under the Act and the Commission’s existing payphone compensation requirements and as a rule change, proper notice of the rule change is required under the APA.<sup>25</sup>

### **III. CONCLUSION**

APCC’s claim that the IDT Petition asks the Commission to create a loophole is preposterous.<sup>26</sup> APCC may mischaracterize IDT’s Petition, but it is plain on its face. IDT seeks to clarify an ambiguous footnote to preserve an objective standard for compliance with the Commission’s payphone compensation rules.

IDT supports any efforts taken by APCC and the Commission to ensure that providers remit dial-around compensation where it is lawfully incurred, as IDT competes against such providers and is placed in an unfair position when IDT must compete against those providers on unequal footing. But the difficulties PSPs encounter are not necessarily any different or more pronounced than those faced by other providers in other aspects of the regulatory regime (*e.g.*, access charges), and cannot serve as the basis for imposing rules that violate section 276 of the Act.

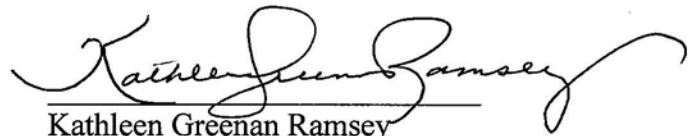
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<sup>25</sup> See *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

<sup>26</sup> APCC Comments at 2.

Accordingly, IDT respectfully asks that the Commission issue a clarification of the *Order* for the purpose of explaining that footnote 101 in no way should be construed to require dial-around compensation for communications that only reach the platform without the caller affirmatively accessing information services or reaching a called party.

Respectfully submitted,

A handwritten signature in cursive script, reading "Kathleen Greenan Ramsey". The signature is written in black ink and is positioned above a horizontal line.

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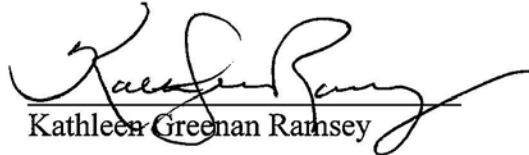
Dated: October 23, 2006

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2006, I caused a copy of the foregoing Reply Comments of IDT Telecom, Inc. to be served by U.S. mail to the following:

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